EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Sam Flannery	**v**	Co-Operative Group Limited

Heard at: Watford (by CVP) **On:** 7 October 2025

Before: Employment Judge Dick

Appearances
For the claimant: In person
For the respondent: Miss Bibia (litigation manager)

REASONS
FOR REFUSAL OF INTERIM RELIEF

Introduction

1. At the conclusion of a hearing on 7 October 2025 I gave an oral judgment with reasons, refusing the claimant's application for interim relief. A written judgment was sent to the parties on 17 October 2025 and these written reasons were requested by the claimant in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2024.

2. As is customary in this sort of case, I did not hear evidence, but dealt with the application on the basis of the written material and submissions from the parties. For what was a one day hearing, I was provided with two bundles, one from each of the parties, which ran to a total of just over 1,200 pages. As the parties realistically accepted, I was not going to be in a position to read every page. I am grateful for the structured way in which both parties prepared their bundles, which enabled me to easily find those documents which were relevant, particularly to the points the claimant was making.

3. There is no dispute that the application for interim relief was made in time and that the claimant otherwise has the legal standing required to make the application.

The Law

4. The issue for me is whether it is likely that the claimant will succeed at a full hearing of his complaint of automatically unfair dismissal. I am applying

section 129 of the Employment Rights Act 1996 ("ERA"), which says that an application for interim relief should be granted if "it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find" that the reason or principal reason for dismissal was one of the statutory automatically unfair reasons.

5. The correct test for me to apply has been set out in Taplin v C Shippam Limited [1978] ICR 1068, which is whether or not the claimant has a "pretty good chance" of success at a final hearing. This is a fairly high bar, although of course it is not insurmountable. It is clearly a higher standard than the balance of probabilities which the Tribunal usually applies.

6. At interim relief hearings the default position is that there will be no oral evidence unless the Tribunal directs otherwise (and I did not). Findings of fact are not made. Instead, an "expeditious summary assessment" is to be conducted (London City Airport Ltd v Chacko [2013] IRLR 610). The process was described by HHJ Eady QC as she then was as a necessarily "broad-brush approach" and "very much an impressionistic one" in His Highness Sheikh Bin Sadr al Qasimi v Robinson UKEAT/0283/17.

7. The particular complaint in this case is automatically unfair dismissal because of making a protected disclosure, or whistleblowing as it is more commonly known. The Taplin test must be met for each element of that complaint here.

8. S 103A ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. In such circumstances the employee it said to be subject to an automatically unfair dismissal.

9. By operation of s 43A and s 43C(1)(a) ERA, a disclosure will be protected if it is a qualifying disclosure made by an employee to an employer. By s 43B, a qualifying disclosure means any disclosure of information which, in the reasonable belief of the person making the disclosure, is made in the public interest and tends to show one or more of five things, or concealment of those things, ("the wrongdoing"). One of those things (s43B(d)) is that that the health or safety of any individual has been, is being or is likely to be endangered. Another (s 43B(b)) is that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. In the case of a disclosure directly to an employer, the Tribunal will consider the following. First, was there a disclosure of information? It is immaterial that the recipient is already aware of the information (s 43L(2)). Second, did the claimant reasonably believe two things: (i) that the information tended to show the relevant wrongdoing and (ii) that the disclosure was in the public interest. So far as both beliefs (i) and (ii) are concerned, it is the claimant's belief at the time of making the disclosure (not any later) that is relevant, and the belief must be genuine, subjectively held but objectively reasonable.

The issues

10. The claimant's dismissal took effect on 8 September 2025. He had worked for the respondent for just over two years. He was provided with a letter setting out what the respondent says was the grounds of his dismissal, which are "some other substantial reason". In short,

> "The ongoing and irreparable breakdown of the working relationship between yourself and the Co-Op, specifically with the Leadership Team."

11. I have to decide whether there is a pretty good chance that the claimant will succeed in his claim that the sole or principal reason for the dismissal was whistleblowing, as opposed to there being some other reason for his dismissal. For the purposes of whether the application for interim relief succeeds, it would merely have to be some other reason, not some *good* other reason. As the claimant had more than two years' service, at a final hearing he would need to prove that he made a protected disclosures and produce some evidence to suggest that the disclosures were the principal reason (Kuzel v Roche Products Limited [2008] ICR 799). This is what I mean below when I refer to what the claimant will have to show at the main hearing.

The disclosures

12. The events that prompt this claim really began around October or November of 2024. The claimant was working as a Team Leader at the respondent's Pangbourne Store. A new manager took over and the claimant notified that manager about reasonable adjustments relating to himself and to some other of his colleagues. Some of these had already been agreed, some were outstanding requests and some were newly requested. That notification was not, on the claimant's case, immediately acted upon. Indeed, I am not sure the respondent would suggest it was immediately acted upon, but the long and the short of it is that the claimant first of all raised an informal complaint about it, which then became a formal grievance. The grievance was eventually dismissed in February 2025.

13. For the sake of brevity in these reasons I will use the word "disclosures" rather then, for example, "purported disclosures" but I make clear that I am not making any finding that there were in fact disclosures within the meaning of s 43B ERA.

14. Between November and January the claimant made what the claim form identifies as the first and second sets of protected disclosures. At least part of these was the formal grievance process that I have already outlined and, as the claimant puts it on the claim form, the disclosures were complaints about the respondent not acting on reasonable adjustments and the associated wellbeing of colleagues. The claimant also raised what he says were breaches of legal obligations and health and safety risks to several individuals. At least at that point, as I understand it on the basis of

submissions, those risks were as a result, the claimant would say, of the respondent's failure to implement reasonable adjustments. It is not for me to make findings of fact at this stage, but I should say that, contrary to the respondent's position, I do not accept that, on any reasonable interpretation of the documents I have seen, the claimant was aggressive in drawing those concerns to the respondent's attention. However, it is my view that the claimant, regarding these first and second disclosures, does not have a pretty good chance of establishing that he reasonably believed that they were made in the public interest, since they were complaints that related to a private dispute, even if it was a private dispute in which he was generously assisting his colleagues. Of course, the fact that they relate to a private dispute does not mean that there cannot be disclosures in the public interest, I make that very clear, but it does in my judgment mean on the facts of this case that the claimant does not have a pretty good chance of establishing that. The reality is that if the claimant was subject to detriment as a result of these first and second sets of disclosures, he would have rather more chance arguing that this was a case of victimisation (for raising concerns under the Equality Act 2010) than whistleblowing detriment/dismissal.

15. The next event of particular significance is that on 14 March 2025 an Employment Tribunal claim was accepted by this Tribunal and served on the respondent. That was a claim by a colleague of the claimant, but the claimant was acting as that person's representative in that claim (and still is, in fact). On 23 May 2025, the claimant was suspended. He points out that that came about a week after the respondent would have become aware of the Tribunal claim that I have just mentioned and would also have become aware, perhaps more to the point, that the claimant was involved in it. The claimant says that it is possible to draw an inference of victimisation here, given that his suspension followed so shortly afterwards. He would also suggest (and I paraphrase) that the grounds for his suspension were flimsy. Whether or not the inference of victimisation can properly be drawn here, I would observe that it is not something that can help the claimant when it comes to the application for interim relief. Aa application for interim relief must be based on, in this context, an automatically unfair dismissal for whistleblowing, rather than on victimisation.

16. On the day after the claimant's suspension, he raised what is referred to in the particulars of claim as a third protected disclosure. In the claimant's own summary, he relayed concerns related to potential criminal statements by the respondent's Employee Relations Department. Criminal, the claimant would say, in the sense of a person acting contrary to the Equality Act 2010 (I assume he refers to s 112(3)). He also complained of (civil) breaches of the Equality Act and of ERA, breaches of data protection legislation, as well as various breaches of duties to the Solicitors Regulatory Authority and also what the claimant would characterise as a miscarriage of justice in the way the respondent's Employee Relations Services handle processes.

17. That 24 May 2025 disclosure is along similar lines to the fourth protected disclosure, in a 10 July 2025 email, which the claimant made clear during the course of oral submissions is the main protected disclosure that his case hinges upon. That 10 July 2025 email was addressed to the respondent's Ms Potts who I will come to in more detail in a moment. It also Bcc'd 11 others including the respondent's dedicated whistleblowing email address. Again, it made various allegations which included breaching the ACAS Code of Conduct, breaching the respondent's policies, victimisation regarding the other Employment Tribunal claim which I have just mentioned, exposing the respondent to risk of legal harm and concealing unlawful conduct, which in the context seems to me to be the data breaches, which were the claimant will say due to the unlawful use of CCTV. (It is the claimant's case that his manager viewed CCTV footage, in breach of data protection legislation, which was then used as the basis for disciplinary action against him.) The 10 July 2025 email also contained a section headed "For My Colleagues – Public Interest Issue" and again referred to potentially criminal conduct. Again, in my judgment, the claimant does not have a pretty good chance of showing that he reasonably believed that those were disclosures in the public interest, despite the section heading he used. They still, in my judgment, relate to what was a private dispute. Even where illegality to the extent of criminality is alleged, that was still criminality alleged to have been resulting fundamentally from issues relating to the private dispute. In other words, unlawful use of CCTV. That does not mean they cannot amount in law to protected disclosures but it does, in my judgment, significantly lessen the chance of the claimant showing that there was a reasonable belief that they were in the public interest.

18. The same logic applies, in my judgment, to the later protected disclosures which the claimant relies upon, which dealt with, as I understand it, the same or similar complaints.

19. I also note the significant fact that the third and fourth set of protected disclosures came after the claimant was informed that he was suspended. It was that suspension process, of course, that ultimately led to his dismissal. This point leads me to the conclusion that the claimant does not have a pretty good chance of showing that the sole or principal reason for his dismissal was that he had made protected disclosures. I expand on this point below.

The dismissal

20. At page 431 of the claimant's Bundle is a letter dated 24 July 2025 inviting the claimant to a "formal meeting… to review [his] continued employment with the company". I do not accept the claimant's characterisation here that this is capable of showing that the outcome of the process was predetermined (or to be more precise, I do not accept that the claimant has a pretty good chance of showing that). In my judgment, the most reasonable interpretation of that letter, at least devoid of the context which

evidence might provide at a final hearing, is that it sets out essentially what the charges are and what the allegations are against the claimant.

21. The decision to dismiss, at least on the respondent's case, was made by Jean Marie McCormick. There was a meeting on 25 August 2025, that meeting being the one referred to in the letter I have just spoken about. The decision following that meeting was conveyed to the claimant at a later meeting of 8 September 2025, which as I have said was the date of his dismissal. A letter from Ms McCormick sets out a number of grounds for the dismissal. She notes that the claimant disagreed with the assertion that there was simply a breakdown of relations but her view was, the letter said, that he had demonstrated through his actions that he did not have the trust in multiple members of the respondent's leadership team. She asserted that any opportunity to resolve the situation had been met with threats of litigation by the claimant, that he had inappropriately escalated his concerns and ultimately her judgement was that the relationship was beyond repair.

22. The claimant has made a number of criticisms of that decision. One example was: how can the relationship have been beyond repair when there had been a very lengthy period of suspension in which the claimant had not even had any contact with many of the people involved. All of those points, and I do not set them all out now, may be arguable points, but that is not the same as saying that it means the claimant is likely to succeed in his whistleblowing claim. Especially at this early stage of the claim, even were I to accept all of the claimant's criticisms that still, in my judgment, does not lead only to one possible inference, i.e. whistleblowing dismissal. Another inference might be victimisation and still another inference might be that this was a genuine "SOSR" dismissal, whether being done well, badly or somewhere in between.

23. A statement provided by the respondent from Ms McCormick asserts that the protected disclosures were not a factor in her decision and that she was only aware of them when she was told about them by the claimant. I do not uncritically accept that assertion, but it does weigh against the strength of the claimant's application that the respondent will have a witness available who is able to speak to those matters. I do accept that it might be argued that the statement exhibits some form of pre-judgment. For example, Ms McCormick says: "I reviewed evidence prior to the meeting and it was clear that there was an existing breakdown in relationship." I would also accept that the transcript of the 8 September 2025 meeting provided by the claimant might go to showing a similar thing, where Ms McCormick asserts: "it is the position we hold, currently we believe the relationship is potentially irreparable" (though in fairness she does uses the word potentially). But that does not necessarily lead to the conclusion that this was not the real reason for the dismissal. I also do not overlook the fact the reasons for the dismissal appear to be quite different to the original reasons which were given for enacting the suspension. The claimant's assertion, for example, that Ms McCormick appeared to be reading off a script and had a decision ready, are assertions that could

really only be tested properly in evidence during the course of a final hearing. Ultimately, while as I say the claimant may have perfectly reasonable arguments about the decision on its face, that is far from saying that he has a good chance of showing that whistleblowing was the real reason for the dismissal. I have also taken account of the statement provided on behalf of the claimant by Ms Nyree Brunger, which is to the effect that there were others at the claimant's store who were having genuine conflicts with management in getting reasonable adjustments and that they were helped by the claimant. I have also taken account of the statement of Mr Stacey, the claimant's union representative.

The claimant's case theory

24. I should address now one further argument or case theory raised by the claimant. He asserts that although the decision on the face of it appears to have been taken by Ms McCormick, there was a manipulation going on in the process so that under the well known case of Royal Mail Group Ltd v Jhuti [2019] UKSC 55, motive and knowledge can be attributed to Ms McCormick where essentially it is someone else pulling the strings. The claimant made it clear during the course of his submissions that that someone, he says, is Sarah Potts, the Employee Relations Partner at the respondent, with the help or support, he said, of Mr Ryan Riley of Peninsular Business Services (the respondent's legal advisors). I accept there is an email that suggests that Mr Riley had at least some involvement in the case on or before 18 February 2025. The claimant suggests that Ms Potts decided to force him out of the business. As I have said, what the claimant says is the most significant disclosure was addressed to Ms Potts. The claimant says that her view of the situation would have changed because initially she would have come to the conclusion that he was preparing to leave the respondent's employ but by 21 July 2025 he had made clear that that was no longer his intention. He suggests there is a marked change in her attitude around that point. He points to metadata which suggests that documents, internal bundles relating to the dismissal, were created around 25 July 2025 and were created with the involvement of Mr Riley from Peninsular, a matter of a day or two after Ms Potts would have formed the view the claimant was now not going to go quietly, if I may put it that way. The claimant also points to the fact that the invitation to an Investigatory Meeting was sent on 24 July 2025, again, around the same time. Maybe that is one inference that the Tribunal would draw, maybe it is not. Another inference might that the bundles would be naturally be prepared around the time of the investigatory meeting.

25. The claimant also pointed me to a note of 24 April 2025, which he had happened upon, which appears to show how the respondent was planning to deal with him, headed "Sarah Potts, Rachel and Ryan Riley" which included a line suggesting that if he did not attend a "reasonable adjustments" meeting that had been arranged, then he would be suspended.

26. As I have said, it may be that in the course of a Final Hearing the Tribunal draws the inferences that the claimant invites it to, but it may be that it does not. I do not consider that the claimant has a pretty good chance on the evidence available to me in persuading the Tribunal to draw those inferences.

27. There is in my judgment a fundamental flaw in the claimant's application for interim relief. Even on the claimant's case (at para 94 of his particulars of claim and as set out in submissions) the respondent suspended him (on 23 May 2025) and begun what he would say was a trumped-up disciplinary procedure with the ultimate aim of getting rid of him by way of a constructive dismissal, because of his involvement in his colleague's litigation. This would of course amount to victimisation, but not to whistleblowing detriment/dismissal. At some point, the claimant says, the respondent's plan changed from constructively dismissing him (victimisation, because of his raising issues under the Equality Act) to directly dismissing him for whistleblowing. Maybe he will be able to persuade a Tribunal of that. But his task will not be simple in my judgment given that even on his own case – let alone that of the respondent's – the respondent initially started with a non-whistleblowing reason to dismiss him.

Conclusions

28. Ultimately, I do not think that at this stage the claimant has a pretty good chance of showing that he made disclosures which he reasonably believed to be in the public interest. Even if he were able to do that, I do not consider that there is a pretty good chance that he could provide sufficient evidence to enable a Tribunal to conclude that those disclosures were the sole or principal reason for his dismissal when, on his own case, there is a different, and perhaps more natural inference, of victimisation. At this early stage it also appears to me on the basis of all I have read that the respondent has a not insignificant chance of proving that there genuinely was a total breakdown in the employment relationship and that the dismissal was fair for some other substantial reason. Any suggestion by the respondent that the claimant took unnecessary recourse to somewhat scattergun, overly legalistic complaints and implied threats of litigation does not seem to me to be necessarily doomed to failure.

29. In summary, in my judgment the claimant does not have a pretty good chance of establishing that he reasonably believed that he made disclosures in the public interest, nor that the sole or principal reason for his dismissal was those disclosures. Having come to that conclusion, it is not necessary for me to make findings on the claimant's chances of success in proving the other elements of the claim for automatically unfair dismissal.

30. The application for interim relief is refused.

Approved by:

Employment Judge Dick

Date: 4 January 2026.

Sent to the parties on:
5 January 2026

For the Tribunal Office.

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